

MONTANA LEGISLATIVE HISTORY

Chapter 612 1987

Bill H 163 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Jan 20 ✓ C

Feb 10 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 09 ✓ C

_____ C

_____ C

_____ C

No minutes were found for
action taken.

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Note: A Conference Committee was appointed,
but its minutes were not recorded.

HOUSE FINAL STATUS

2/05 HEARING
2/06 COMMITTEE REPORT--BILL NOT PASSED
2/07 ADVERSE COMMITTEE REPORT ADOPTED

88 7

HB 161 INTRODUCED BY MEYERS, ET AL.
NO RESTRICTION ON OPERATION OF VEHICLES CARRYING
PERISHABLE AGRICULTURAL SEEDS ON A PUBLIC
HIGHWAY UNDER CERTAIN CONDITIONS

1/13 INTRODUCED
1/13 REFERRED TO HIGHWAYS & TRANSPORTATION
1/20 HEARING
1/28 COMMITTEE REPORT--BILL PASSED AS AMENDED
1/30 2ND READING PASSED 69 26
1/31 3RD READING PASSED 74 20

TRANSMITTED TO SENATE
2/02 REFERRED TO HIGHWAYS & TRANSPORTATION
3/05 HEARING
3/21 COMMITTEE MINORITY REPORT--BILL CONCURRED
AS AMENDED
3/26 2ND READING CONCURRED 32 17
3/28 3RD READING CONCURRED 37 13

RETURNED TO HOUSE WITH AMENDMENTS
4/03 2ND READING AMENDMENTS CONCURRED 65 13
4/03 3RD READING AMENDMENTS CONCURRED 82 9
4/08 SIGNED BY SPEAKER
4/09 SIGNED BY PRESIDENT

4/09 TRANSMITTED TO GOVERNOR
4/14 SIGNED BY GOVERNOR
CHAPTER NUMBER 468 EFFECTIVE DATE: 4/14/87

HB 162 INTRODUCED BY KENNERLY, ET AL.
REQUIRE GUARANTEED STUDENT LOAN MONEY BE DEPOSITED
IN OTHER SPECIAL REVENUE FUND
BY REQUEST OF LEGISLATIVE AUDIT COMMITTEE

1/13 INTRODUCED
1/13 REFERRED TO EDUCATION & CULTURAL RESOURCES
1/16 HEARING
1/16 COMMITTEE REPORT--BILL PASSED
1/20 2ND READING PASSED 95 0
1/21 3RD READING PASSED 99 0

TRANSMITTED TO SENATE
1/22 REFERRED TO EDUCATION & CULTURAL RESOURCES
3/04 HEARING
3/05 COMMITTEE REPORT--BILL CONCURRED
3/09 2ND READING CONCURRED 50 0
3/11 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
3/14 SIGNED BY SPEAKER
3/14 SIGNED BY PRESIDENT
3/16 TRANSMITTED TO GOVERNOR
3/19 SIGNED BY GOVERNOR
CHAPTER NUMBER 134 EFFECTIVE DATE: 10/01/87

HB 163 INTRODUCED BY MERCER, ET AL.
PROVIDING DEFINITION OF "UNDER THE INFLUENCE";
REPLACING EXISTING STANDARD

HOUSE FINAL STATUS

1/13 INTRODUCED
 1/13 REFERRED TO JUDICIARY
 1/20 HEARING
 2/10 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/12 2ND READING PASSED 90 8
 2/13 3RD READING PASSED 85 4

TRANSMITTED TO SENATE
 2/16 REFERRED TO JUDICIARY
 3/09 HEARING
 3/12 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/18 2ND READING CONCURRED 47 1
 3/20 3RD READING CONCURRED 46 3

RETURNED TO HOUSE WITH AMENDMENTS
 3/26 2ND READING AMENDMENTS NOT CONCURRED 77 19
 3/26 CONFERENCE COMMITTEE APPOINTED
 4/09 CONFERENCE COMMITTEE REPORT
 4/15 2ND READING CONFERENCE COMMITTEE
 REPORT ADOPTED 93 3
 4/16 3RD READING CONFERENCE COMMITTEE
 REPORT ADOPTED 91 6

SENATE
 3/28 CONFERENCE COMMITTEE APPOINTED
 4/10 CONFERENCE COMMITTEE REPORT
 4/11 2ND READING CONFERENCE COMMITTEE
 REPORT ADOPTED 34 0
 4/13 3RD READING CONFERENCE COMMITTEE
 REPORT ADOPTED 48 2

4/21 SIGNED BY SPEAKER
 4/22 SIGNED BY PRESIDENT
 4/22 TRANSMITTED TO GOVERNOR
 4/27 SIGNED BY GOVERNOR
 CHAPTER NUMBER 612 EFFECTIVE DATE: 10/01/87

HB 164 INTRODUCED BY BROWN, J.
 LEGAL HOLIDAYS--ABOLISH ELECTION DAY AND LINCOLN'S
 BIRTHDAY; CREATE FLOATING HOLIDAY

1/13 INTRODUCED
 1/13 REFERRED TO STATE ADMINISTRATION
 1/13 FISCAL NOTE REQUESTED
 1/19 FISCAL NOTE RECEIVED
 FAILED TO MEET TRANSMITTAL DEADLINE

HB 165 INTRODUCED BY BROWN, J.
 PHARMACISTS NOT LIABLE FOR PEER REVIEW

1/13 INTRODUCED
 1/13 REFERRED TO BUSINESS & LABOR
 1/20 HEARING
 1/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/26 REREFERRED TO JUDICIARY
 2/18 HEARING
 2/23 TAKEN FROM COMMITTEE
 2/24 2ND READING PASSED 99 0
 2/24 3RD READING PASSED 100 0

TRANSMITTED TO SENATE
 3/02 REFERRED TO BUSINESS & INDUSTRY

HOUSE BILL NO. 163
INTRODUCED BY MERCER, SPAETH

IN THE HOUSE

JANUARY 13, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 10, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 11, 1987	PRINTING REPORT.
FEBRUARY 12, 1987	SECOND READING, DO PASS.
FEBRUARY 13, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 85; NOES, 4.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 12, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1987	SECOND READING, CONCURRED IN.
MARCH 20, 1987	THIRD READING, CONCURRED IN. AYES, 46; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 25, 1987	RECEIVED FROM SENATE.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.

MARCH 26, 1987

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 28, 1987

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 9, 1987

CONFERENCE COMMITTEE REPORTED.

APRIL 11, 1987

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

IN THE SENATE

APRIL 13, 1987

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 15, 1987

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 16, 1987

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

1 HB BILL NO. 163
2 INTRODUCED BY MARCA SPACH
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DEFINITION
5 OF "UNDER THE INFLUENCE" TO BE APPLIED IN CASES OF DRIVING
6 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; REPLACING THE
7 EXISTING STANDARD; AND AMENDING SECTIONS 61-5-205, 61-5-208,
8 AND 61-8-401, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 61-8-401, MCA, is amended to read:

12 "61-8-401. Persons under the influence of alcohol or
13 drugs. (1) It is unlawful and punishable as provided in
14 61-8-714 for any person who is under the influence of:

15 (a) alcohol to drive or be in actual physical control
16 of a vehicle upon the ways of this state open to the public;

17 (b) a narcotic drug to drive or be in actual physical
18 control of a vehicle within this state;

19 (c) any other drug ~~to--a--degree--which--renders--him~~
20 ~~incapable--of--safely--driving--a--vehicle~~ to drive or be in
21 actual physical control of a vehicle within this state; or

22 (d) alcohol and any drug ~~to-a-degree-that-renders-him~~
23 ~~incapable-of-safely-driving-a-vehicle~~ to drive or be in
24 actual physical control of a vehicle within this state.

25 (2) The fact that any person charged with a violation

1 of subsection (1) is or has been entitled to use alcohol or
2 such a drug under the laws of this state does not constitute
3 a defense against any charge of violating subsection (1).

4 (3) "Under the influence" means that as a result of
5 taking into the body alcohol, drugs, or any combination
6 thereof, a person's ability to safely operate a motor
7 vehicle has been lessened to the slightest degree.

8 (3)(4) Upon the trial of any civil or criminal action
9 or proceeding arising out of acts alleged to have been
10 committed by any person driving or in actual physical
11 control of a vehicle while under the influence of alcohol,
12 the concentration of alcohol in the person's blood at the
13 time alleged, as shown by chemical analysis of the person's
14 blood, urine, breath, or other bodily substance, shall give
15 rise to the following presumptions:

16 (a) If there was at that time an alcohol concentration
17 of 0.05 or less, it shall be presumed that the person was
18 not under the influence of alcohol.

19 (b) If there was at that time an alcohol concentration
20 in excess of 0.05 but less than 0.10, that fact shall not
21 give rise to any presumption that the person was or was not
22 under the influence of alcohol but such fact may be
23 considered with other competent evidence in determining the
24 guilt or innocence of the person.

25 (c) If there was at that time an alcohol concentration

1 of 0.10 or more, it shall be presumed that the person was
2 under the influence of alcohol. Such presumption is
3 rebuttable.

4 ~~(4)~~(5) The provisions of subsection ~~(3)~~ (4) do not
5 limit the introduction of any other competent evidence
6 bearing upon the issue of whether the person was under the
7 influence of alcohol.

8 ~~(5)~~(6) Each municipality in this state is given
9 authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722,
10 and subsections (1) through ~~(4)~~ (5) of this section, with
11 the word "state" in 61-8-406 and subsection (1) of this
12 section changed to read "municipality", as an ordinance and
13 is given jurisdiction of the enforcement of the ordinance
14 and of the imposition of the fines and penalties therein
15 provided."

16 Section 2. Section 61-5-205, MCA, is amended to read:

17 "61-5-205. Mandatory revocation of license upon proper
18 authority. The department upon proper authority shall revoke
19 the license or operating privilege of any operator or
20 chauffeur upon receiving a record of such operator's or
21 chauffeur's conviction or forfeiture of bail not vacated of
22 any of the following offenses, when such conviction or
23 forfeiture has become final:

24 (1) negligent homicide resulting from the operation of
25 a motor vehicle;

1 (2) driving a motor vehicle while under the influence
2 of alcohol or narcotic any drug, ~~or-willfully--or--knowingly~~
3 ~~under--the--influence--of--any--other-drug-to-a-degree-which~~
4 ~~renders-him-incapable-of-safely-driving-a-motor-vehicle,~~ or
5 a combination thereof, except as provided in 61-5-208, or
6 operation of a motor vehicle by a person with a blood
7 alcohol concentration of 0.10 or more;

8 (3) any felony in the commission of which a motor
9 vehicle is used;

10 (4) failure to stop and render aid as required under
11 the laws of this state in the event of a motor vehicle
12 accident resulting in the death or personal injury of
13 another;

14 (5) perjury or the making of a false affidavit or
15 statement under oath to the department under this chapter or
16 under any other law relating to the ownership or operation
17 of motor vehicles;

18 (6) conviction or forfeiture of bail not vacated upon
19 three charges of reckless driving committed within a period
20 of 12 months."

21 Section 3. Section 61-5-208, MCA, is amended to read:

22 "61-5-208. Period of suspension or revocation. (1) The
23 department may not suspend or revoke a driver's license or
24 privilege to drive a motor vehicle on the public highways
25 for a period of more than 1 year, except as permitted under

61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the department may not then issue a new license unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or a narcotic any drug or--knowingly--or--willingly--under--the influence--of--any--other-drug-to-a-degree-which-renders-him incapable--of--safely--driving--a--motor---vehicle, or a combination thereof, or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of

a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail."

NEW SECTION. Section 4. Extension of authority. Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 20, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 20, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Joan Miles who was absent and Rep. Fritz Daily who was excused.

HOUSE BILL NO. 163: Rep. Mercer, District No. 50, sponsor, stated HB 163 tries to set a standard for the definition of "driving under the influence". It comes down to a fine line of what the definition is under the statute and what the definition is proposed under the bill. In Montana, for 27 years, the jury instructions given in "driving under the influence of" cases stated that if the ability of the driver has been lessened in the slightest degree by the use of alcohol, the driver is deemed to be "under the influence of" alcohol. The rule of law in jury instructions is, "if the ability to drive safely has been lessened in the slightest degree". Recently, the Montana Supreme Court in the case of City of Helena vs. Davis, decided August 8, 1986, noticed that the statute read, "to a degree which renders him incapable of safely driving a vehicle". In the legal world, the wording could have a tremendous impact on the jury instruction. It is easier to convict someone in "driving under the influence" cases when it could be shown that someone's ability to drive had been lessened to the slightest degree as opposed to saying their ability might be lessened but they can still drive safely. Rep. Mercer stated the main reason he was supporting the bill was that for 27 years, the Montana law had worked well. We should not back off from tough driving under the influence laws.

PROPOSERS: DAVID LACKMAN, Montana Public Health Association, was in support of HB 163 because it provided a definition of "under the influence of", replacing the existing standard. He stated HB 163 was essential legislation and submitted written testimony. (Exhibit A).

KATHY SEELEY, Department of Justice, Assistant Attorney General, stated that standards are needed and HB 163 would help set them.

MARK J. MURPHY, Department of Justice, Assistant Attorney General, representing the Association of County Attorneys,

believed HB 163 was essential legislation. At this point, there was no standard the Association felt comfortable with. DUI cases were presently the most litigated cases in the state and a standard must be set legislatively. In order to continue the strong enforcement of DUI cases, they needed a strong standard and HB 163 provided that standard.

DAVID N. HULL, City of Helena, Assistant County Attorney, stated HB 163 did two things. On the right hand, it restored the Davis case, it did not present a new standard, it merely restored the standard they had used for 27 years. On the left hand, it got rid of a distinction that did not make any sense. He urged support of the bill.

M. E. NELSON, Lewis and Clark County Coroner, Chairman of the Lewis and Clark County DUI Task Force, and representing some of the DUI Task Forces in Montana that were not able to attend the hearing, stated HB 163 was essential legislation and urged support of the bill.

RAYLEEN BEATON, Helena City Commissioner, and representing the local DUI Task Force consisting of 40 citizens, stated they supported the legislation exactly as proposed.

JIM MANION, Montana Automobile Association, agreed with the statement that if Montana was to have strong DUI laws, they needed a strong standard. He stated they support HB 163.

RICHARD E. GILROY, member of the Lewis and Clark County DUI Task Force and a Montana certified chemical dependency counselor, highly recommend the bill.

MIGNON WATERMAN, Montana Association of Churches, took a strong stand in support of strengthening the DUI laws in the state of Montana. She urged support of HB 163.

MIKE MURRAY, representing the Chemical Dependency Programs in Montana, stated they had no objection to the bill as it was proposed.

OPPONENTS: Rep. Dave Brown stated that he went on record in opposition to the bill.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 163: Rep. Gould asked Rep. Mercer about a driver who had an impairment in driving due to taking a prescription drug. If he was found swerving on the road, could he be arrested with the language in the bill, "lessened to the slightest degree". Rep. Mercer asked Mr. Murphy to answer the question. Mr. Murphy stated under that situation, all of the behavior of the individual would be examined in court and the jury would have the ability to look at the behavior and the driving

ability of the individual. If he was an unsafe driver, even under a prescription drug, and was warned ahead of time that the drug may impair his ability to drive, the statute would apply to that situation also. Rep. Mercer stated that this was status quo and that they were not passing new legislation. HB 163 was an attempt to return the law to what they had relied on for 27 years and he closed the hearing on HB 163.

HOUSE BILL NO. 192: Rep. Cobb, sponsor, District No. 42, stated HB 192 simply allocated one-half of the fine for offenses of criminal trespass to property and hunting on private property without permission to the owner of the property. It effected two criminal trespass statutes. The fine could be up to \$500.00 with six months in the county jail. He stated there were about 1500 to 1600 criminal trespass violations across the state. There were about 140 big game trespass violations a year that were actually convicted. The reasons for the bill was that it gave the property owner compensation for his time and expense for bringing a case into action. The court still had to decide the fine.

PROPONENTS: CAROL MOSHER, Montana Stockgrowers and Montana Cattle Women, stated landowners spend a lot of time and money patrolling and checking gates, fences and picking up litter that is left along roads and streams by recreationists. She submitted written testimony. (Exhibit A). She also submitted written testimony from the Montana Cattlemen's Association International. (Exhibit B).

REP. GRADY went on record in support of HB 192 because it addressed a serious situation. The landowner was the one who ended up with damage to his property and this legislation was one way he could get restitution.

OPPONENTS: JIM FLYNN, Department of Fish, Wildlife and Parks, stated that state fish and game wardens had authority to enforce provisions of Section 45-6-203 along with other peace officers (sheriff, police, etc.). The fines collected under this section are not earmarked for the Fish and Game special revenue account. Thus, the financial impact was not with the department, but rather with the city or county. State fish and game wardens also enforce the provisions of Section 87-3-304. Fines or bond forfeitures collected under this section were to be used to partially support the warden retirement system. Presently, out of the \$50.00 fine, \$7.50 was taken by the county for court costs and \$42.50 was remitted to the state treasurer for the fish and game special account for warden retirement. HB 192 seemed to contemplate an enforcement system which would require those

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date *January 20, 1987*

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)		✓	
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

WITNESS STATEMENT

EXHIBIT ADATE 1-20-87HB #163NAME DAVID LACKMANBILL NO. HB163ADDRESS 1400 Winne Avenue, Helena, MT 59601 (443-3494)DATE 1/20/87WHOM DO YOU REPRESENT? Montana Public Health AssociationSUPPORT XXXXXX

OPPOSE _____

AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. House Judiciary
8:00 A.M. (Tuesday) 312-D Providing definition of "Under the influence";
Comments: Replacing existing standard.
We consider this bill to be essential legislation.

Together with Mike Harrington, I am the one who got "implied consent" under way by providing testing for blood alcohol concentration. It soon became evident that the standard of 0.1 % was too high for many individuals. During one of our training sessions for the highway patrol, free alcoholic beverages were supplied to the officers. Then they were tested. Only one officer reached 0.1 %. However, there was unanimous agreement that even at .05- 0.1 % , they were not capable of operating a motor vehicle safely. Many jurisdictions world-wide have set the level at .05 %. Also, there are improved physical tests which can be administered by the officer at the scene that are reliable indications of capability to operate a motor vehicle safely.

In the interest of reducing the slaughter on the highways of Montana, we urge your favorable consideration of this bill.

Thank you

DBL

tissue products and do the hospitals bill for them. Ms. Gilbert said that the tissues and blood are not sold to the hospital. Blood is furnished to the hospitals for their use and the patient pays for the services and tests. The hospitals bill the patients.

Rep. Hannah asked Ms. Gilbert if (by his understanding) organs, tissues, and blood are free, then, the costs of testing and services are then charged to the patient. Ms. Gilbert stated that essentially, he is correct. The United States has gone to a volunteer system of blood donation. The medical community is opposed to selling organs.

Rep. Miller closed the hearing on HB 367.

EXECUTIVE SESSION:

ACTION ON HB 367: Rep. Gould moved DO PASS. Question was called. A voice vote was taken and the motion CARRIED unanimously.

ACTION ON HB 554: Rep. Daily moved DO PASS. Question was called. A voice vote was taken and the motion CARRIED unanimously.

ACTION ON HB 514: Rep. Brown moved DO PASS. Rep. Meyers stated he is not sure if this bill saves money or not. Rep. Daily moved to amend on page 6, line 10, which makes sure that for all cases there is a written transcript made. Rep. Miles commented that she does not see that any money will be saved. Question was called. Rep. Hannah made a substitutive motion of DO NOT PASS. Rep. Brown moved DO PASS. He stated he is not sure if the amendment is clear enough. Rep. Hannah moved to TABLE the bill. A voice vote was taken and the motion CARRIED 10-3, with Reps. Darko, Brown, and Strizich dissenting. HB 514, TABLED.

ACTION ON HB 163: Rep. Mercer moved to take HB 163 OFF THE TABLE. A voice vote was taken and the motion CARRIED unanimously. Rep. Mercer moved to amend on page 2, line 7 by inserting the word "diminished". Rep. Mercer moved that HB 163 DO PASS AS AMENDED. (See Amendment attached). Question was called and a voice vote was taken. The motion CARRIED 10-3, with Reps. Brown, Gould, and Grady dissenting. HB 163, DO PASS AS AMENDED.

ACTION ON HB 262: Rep. Daily moved DO PASS. Rep. Miles stated this bill is a big improvement from the one last session. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 262, DO PASS.

February 10,

19 87

Mr. Speaker: We, the committee on Judiciary

report HOUSE BILL NO. 163

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

Page 2, line 7.

Strike: "lessened to the slightest degree"

Insert: "diminished"

JMS
FIRST

reading copy (**WHITE**)
color

in line 13. He said whether the plane is operated by the military or civil public the offense should be the same. Representative Schye said that would be fine to take that part out. Mr. Wells said the FFA would like to keep it just "civil". Senator Mazurek asked why the bill could not cover both civil and military in the state of Montana. Mr. Wells said the FFA has no jurisdiction over military aircraft.

Senator Pinsoneault suggested on page 3, line 13, after the word "crew member" that the words "or as part of the maintainance, safety or routine relocation of an aircraft on the ground, it is towed by a person who". Senator Pinsoneault said a person towing and aircraft should follow under this purposed statute. Representative Schye felt that should follow under another statute. Senator Pinsoneault felt the groundcrew could be more liable to be drinking on the job.

Senator Beck asked if there is a real big difference in flying an airplane and driving a car because the alcohol rate for driving is .01 and the bill purposes and alcohol rate of .04 for flying and airplane. Representative Schye said the .04 came from the FFA. He also said the lack of oxygen in a plane makes a big difference while flying under the influence.

Representative Schye closed by saying that Montana has more airplanes per capita in the U.S.

CONSIDERATION OF HB 163: Representative John Mercer of Polson introduced HB 163 (see Exhibit 5).

PROPOSERS: David Lackman, Montana Public Health Association, supported the bill (see Witness sheet).

Kathy Seely, Department of Justice, said one of the most important parts of this bill is on page 1, lines 19 and 20. She said this gives a high standard of proof.

Mark Murphy, Attorney General, presented to the committee a case on this subject (City of Helena, vs Davis) (see Exhibit 6).

David Hull, City of Helena, stated that he was the attorney involved in the appeal of the Davis case that Mr. Murphy handed out. He stated there are two separate burdens of proof in this statute; the fact that if you have been drinking, can you drive safely or if you have been taking drugs and drinking, can you drive safely. He said the appeal was based on the fact that it is unconstitutional to have two separate burdens of proof. He supported the bill.

Mikey Nelson, Chairman of the Lewis and Clark DUI task force, supported the bill.

Rayleen Beaton, STOP DUI task force, supported the bill also.

OPPONENTS: None.

DISCUSSION ON HB 163: Senator Crippen asked what the difference is between "lessen to the slightest degree", which was stricken from the bill, and "diminished". Senator Crippen asked if the House Judiciary had an exact definition of diminish in their minds. Representative Mercer answered that the House Judiciary felt it was a battle of words. Senator Crippen asked if a tired legislator is on his way home from the session, wouldn't that individual's ability to operate that vehicle diminished somewhat. Senator Crippen asked if that person is committing a crime. Representative Mercer said no he was not, because the person was not weaving down the road, if the person was, then the policeman could give him a ticket.

Senator Mazurek asked how one can prove "diminished" when one doesn't have the test. Mr. Hull said the overall testimony against a person will show the diminished amount. Mr. Hull said that many people want to use the defense that yes they were drunk and yes they were weaving down the road, but the person didn't hit anything before being pulled over. He said that is used all the time as a defense.

Representative Mercer closed.

CONSIDERATION OF HB 546: Representative Harry Fritz of Missoula introduced HB 546 (see Exhibit 7).

PROPOSERS: George Schunk, Department of Justice, said he doesn't like what the House did to the bill and he handed out a summary of what the bill looked like before the House amended it and after, and what Harry Fritz would like to do with the bill (see Exhibit 8). He hoped the committee would return the bill to its original estate or table the bill.

Jacqueline N. Terrell, American Insurance Association, supported the bill, but presented an amendment also (see Exhibit 9).

Bonnie Tippy, Alliance for Independent Insurers, support the bill.

Randy Gray, State Farm Insurance, supported the bill also.

OPPONENTS: None

DISCUSSION ON HB 546: Senator Mazurek asked if the committee adopts the amendment that Mr. Schunk purposed, would it not make every misdemeanor a liability offense. Mr. Schunk replied that the fine would have to

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Wally Seelye	Dept of Justice	HB 163	✓	
James H. Hagan	Dept of Justice	HB 163 3710	✓	
David N. Hull	City of Helena	HB 163	✓	
MARK J MURPHY	DOE J	HB 163	✓	
David LACKMAN	MT Public Health Assn	HB 163	✓	
" "	" " " "	HB 396	✓	
Rick Day	Dept of Revenue	HB 558	N/A	N/A
DAVID LACKMAN	MT Public Health Assn	HB 509	✓	
MARC RACIAT	MT County Attorneys	HB 558	✓	
Brookes Morin	City of Helena	HB 163	✓	
Kayleen Boston	Stop DUT Task Force	HB 163	✓	
Carolanne Farrell	Am. Insurance Assoc	HB 546	✓	
JR Budd Gould	Dist 61	HB 558	✓	
Fred W. Harbison	Montana Aeronautic Division	HB 509	✓	
Arthur I. Weller	Federal Aviation Admin	HB 509	✓	
George Schunk	Dept of Justice	HB 546	✓	
JUDITH CARLSON	Co Health	HB 163	✓	
M.E. "Nicky" Nelson-Greene	Stop DUT Task Force	HB 163	✓	
Bonnie Gippy	ATI	HB 546	✓	
Randy Gray	NAII ; State Farm	HB 546	✓	

(Please leave prepared statement with Secretary)

SUMMARY OF HB163 (MERCER)

(Prepared by Senate Judiciary Committee Staff)

HB163 changes the laws regarding driving under the influence of alcohol or other drugs. It amends the three sections dealing with driving under the influence, mandatory revocation of license, and suspension or revocation of license. Under current law, it is illegal to drive or be in actual physical control of a vehicle while "under the influence" (undefined) of 1) alcohol (without qualification), 2) a narcotic drug (without qualification), or 3) any other drug to a degree which renders him incapable of safely driving a vehicle. This bill amends the third category by eliminating the qualification of "to a degree which renders him incapable of safely driving a vehicle" and then establishes a definition of "under the influence" which qualifies all three categories.

"Under the influence" is defined as meaning "that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished. (The definition was originally drafted as "ability . . . has been lessened to the slightest degree" this was amended to "diminished" by the House.)

COMMENTS: None.

C:\LANE\WP\SUMHB163.

S T A T E R E P O R T E R

Box 749

Helena, Montana 59624

EXHIBIT NO. 6DATE March 9BILL NO. HB No 3

VOLUME 43

No. 86-55

THE CITY OF HELENA,

Plaintiff and Respondent,

v.

Submitted: Jun. 24, 1986

Decided: Aug. 8, 1986

KEITH OWEN DAVIS,

Defendant and Appellant.

AUTOMOBILES, Appeal from conviction for driving under the influence of alcohol or drugs on the grounds that the jury was improperly instructed. The Supreme Court held that the "Cline" instruction is no longer a proper statement of the law in Montana and the instruction must be either revised or abandoned to conform with the provisions of Section 61-8-401, MCA.

Appeal from the First Judicial District Court, Lewis & Clark County, Hon. Henry Loble, Judge

For Appellant: Leo J. Gallagher, Helena

For Respondent: Hull & Sherlock; David Hull, Helena

Submitted on briefs.

Opinion by Justice Harrison; Chief Justice Turnage and Justices Sheehy, Weber, Morrison, Hunt and Gulbrandson concur.

Reversed and remanded.

Mont.

723 P.2d 224

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Davis, Defendant and Appellant.
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SENATE JUDICIARY

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DATE

3-9-87

BILL NO.

H.B. 163

Mr. Justice Harrison delivered the Opinion of the Court.

This is an appeal by the defendant from his conviction for the offense of driving under the influence of alcohol or drugs in violation of § 61-8-401, MCA. The only contention raised by the defendant on appeal is whether the trial court properly instructed the jury with regard to the above charged offense. We reverse and remand this case for a new trial consistent with this opinion.

On April 14, 1985, the defendant-appellant, Keith Owen Davis (hereinafter "Davis"), was arrested for driving under the influence of alcohol or drugs in violation of § 61-8-401, MCA. The defendant was convicted of the charged offense in Helena City Court and he appealed his conviction to the District Court. In a trial de novo before the District Court of the First Judicial District a jury of six persons convicted the defendant of the same charged offense.

Section 61-8-401, MCA, reads in pertinent part as follows:

"Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

"(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

"(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

"(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

"(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

"(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

"(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

"(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

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"(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

"(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

"(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol. (Emphasis added.)

"..."

The jury was instructed, over defense counsel's objection, that the law as it relates to § 61-8-401 was as follows:

"You are instructed that the expression 'under the influence of alcohol' covers not only all the well-known and easily recognized conditions and degrees of intoxication but any abnormal mental or physical condition which is the result of indulging in alcohol to any degree, and which tends to deprive a person of that clearness of intellect and control of himself which he would otherwise possess. If the ability of the driver of an automobile has been lessened in the slightest degree by the use of alcohol, then the driver is deemed to be under the influence of alcohol. The mere fact that a driver has taken a drink does not place him under the ban of the statute unless such drink has some influence upon him, lessening in some degree his ability to handle said automobile." (Emphasis added.)

Davis now presents the following issue for review by this Court: Whether the District Court erred by giving a jury instruction that was at variance with the statute defining the offense for which he was charged and convicted.

In his brief, Davis argues because he was charged with driving under the influence of both alcohol and drugs pursuant to (1) (d) of § 61-8-401, the law clearly states he is not guilty unless his driving ability was impaired "to a degree that [rendered] him incapable of safely driving a [motor] vehicle." But rather than instructing the jury as to the criteria set forth in the statute, Davis argues, the trial court instructed the jury to convict him if his ability to drive was "lessened in the slightest degree."

Davis concedes the jury instruction given by the trial court was approved by this Court nearly 27 years ago in State v. Cline (1959), 135 Mont. 372, 339 P.2d 657. However, Davis argues, the instruction approved in Cline related only to a situation where the defendant was charged and convicted of driving under the influence of intoxicating liquor. In approving the instruction in Cline, Davis points out, this Court interpreted Montana's 1955 version of its DUI law and noted "the

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Legislature . . . placed no limitations on the extent of the influence of intoxicating liquor required to come under the statute . . . [and] the instruction, taken as a whole, correctly states the law in Montana as applicable to a case of this kind." Cline, 339 P.2d at 662. Montana's 1955 DUI law (Art. IV, Section 39, Chapter 263 of the Session Laws for 1955) provided as follows:

"Persons under the influence of intoxicating liquor or of drugs.

"(a) It is unlawful . . . for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of this State shall not constitute a defense against any charge of violating this paragraph." (Emphasis added.)

Unlike the defendant in Cline, Davis argues, he was charged with driving under the influence of both alcohol and drugs. Further, unlike the offense charged in Cline, Davis asserts, the statute he was charged and convicted of violating does contain a clear legislative directive as to the extent of influence of the intoxicants. The offense charged in this case does not say the law is broken if one drives while impaired to the "slightest degree;" rather, the law states an offense is committed if one's driving ability is impaired "to a degree that renders him incapable of safely driving a [motor] vehicle." Davis argues the trial court committed reversible error by instructing the jury to convict him on the basis of a factual criteria that is at variance with the criteria used by the legislature in defining the elements of the crime. Had the jury in this case been fully and fairly instructed on the law as passed by the legislature, Davis argues, he may not have been convicted.

Although we do not totally agree with the argument presented by Davis, we do feel he has brought to light one very important point -- the "Cline" instruction no longer reflects the law in Montana as passed by our legislature.

First, it must be noted that Davis was not charged with driving under the influence of both alcohol and drugs pursuant to (1) (d) of § 61-8-401 as he suggests. Rather, Davis was charged with a violation of § 61-8-401 generally. In other words, Davis was charged with driving while under the influence of alcohol and/or drugs.

Next, we feel it is important to review the argument presented by the City of Helena. The City of Helena, of course, strongly argues that the jury instruction given and approved in Cline, supra, was also appropriately given in the instant case. As noted above, this Court in Cline interpreted Montana's 1955 DUI law and determined that the offered instruction correctly stated the law in Montana as applicable to a case of that kind. In both Cline and the instant case the

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defendants were charged with driving under the influence of alcohol (intoxicating liquor). It is also important to note, the City of Helena argues, that both Montana's 1955 DUI law and today's DUI law are essentially the same (see above). A comparison of the former law with today's law reveals that despite its many amendments the legislature has left intact the original criteria regarding the degree of impairment the state must prove in order to convict an individual of driving under the influence of alcohol or drugs. Therefore, since the instruction given and approved in Cline was based upon the same laws and situation as found in the instant case, the City of Helena argues, it was proper that the "Cline" instruction was given in this case. We disagree.

Simply put, we hold the "Cline" instruction no longer states the law in Montana. We find since this Court approved the "Cline" instruction in 1959, the legislature has significantly revised this State's DUI law. Although a comparison of Montana's original DUI law and today's DUI law reveals that the legislature has left intact much of the statute's original language, the legislature has also made some critical additions to the statute since it was first enacted. The most important addition to the DUI law has been subsection (3) of 61-8-401 which sets forth the various presumptions that may be read to a jury when a person is charged with driving under the influence of alcohol (see above). Obviously, this section of the DUI law was not available to this Court when we approved the "Cline" instruction. In fact, in Cline, we held that because the legislature had placed no limitation on the extent of the influence of alcohol required to come under the DUI statute, we could justifiably adopt the offered instruction. As this Court stated in Cline:

"This identical instruction was given in an Arizona case, Steffan v. State, 45 Ariz. 210, 42 P.2d 615, 618. The court there made the observation that the Legislature of the State placed no limitation on the extent of the influence of intoxicating liquor required to come under the statute, and held that they could not add to the language of the statute. We believe that the instruction, taken as a whole, correctly states law in Montana as applicable to a case of this kind.

Cline, 339 P.2d at 662. Clearly, this is not the situation under Montana's current DUI law.

In conclusion, we hold the "Cline" instruction is no longer a proper statement of the law in this State and the instruction must either be revised or abandoned to conform with the provisions of § 61-8-401. As noted above, we find the legislature today had specifically spelled out in § 61-8-401 the extent of the influence of intoxicants necessary to be convicted of driving under the influence of alcohol or drugs. As applied to the instant case, Davis is entitled to a new trial with the jury being instructed as to proper criteria set out in § 61-8-401 which is applicable to a charge of driving under the influence of alcohol and/or drugs.

The conviction of the defendant is reversed and this matter is remanded for a new trial consistent with this opinion.

Strike: remainder of line 18 through "COMMERCE" on line 19

And, as amended, be concurred in. Report adopted.

LABOR AND EMPLOYMENT RELATIONS (Lynch, Chairman) 4/9/87
HB 884, third reading copy, be amended as follows:

1. Page 13.

Following: line 7

Insert: "NEW SECTION. Section 8. Prior law superseded. [This act] hereby supersedes the provisions of 1-2-113 as it may apply to [this act]."

Renumber: subsequent sections

And, as amended, be concurred in. Report adopted.

REPORTS OF SELECT COMMITTEES

Conference Committee
on House Bill No. 163
Report No. 1, April 9, 1987

Mr. President:

We, your Conference Committee on House Bill No. 163, met and considered:

Senate amendments to House Bill No. 163

We recommend as follows:

That House Bill No. 163, reference copy, be amended as follows:

1. Page 2, line 8.

Strike: "APPRECIABLY"

And that this Conference Committee Report be adopted.

For the Senate:

Halligan, Chairman
Brown
Yellowtail

For the House:

Mercer, Chairman
Giacometto
D. Brown

Conference Committee
on House Bill No. 277
Report No. 1, April 9, 1987

Mr. President:

We, your Conference Committee on House Bill No. 277, met and considered:

Senate amendments to House Bill No. 277

We recommend as follows:

That House Bill No. 277, reference copy, be amended as follows:

1. Page 3, line 2.

Strike: "61-5-206."

And that this Conference Committee Report be adopted.

For the Senate:

Pinsoneault, Chairman

For the House:

Sales, Chairman